

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4627 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SHIVLAL KANJIBHAI VAGHELA

Versus

STATE OF GUJARAT

Appearance:

MR JJ YAJNIK for Petitioner
MR RJ OZA for Respondent No. 1
MR LR PUJARI, AGP, for Respondent No. 2, 4
MR MR PREM FOR MR ND NANAVATI for Respondent No. 3

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 07/07/2000

ORAL JUDGEMENT

1. The petitioner challenges the order dated 6th August 1988 rejecting the objection application dated 20th October 1984 against the combined seniority list of

Junior Engineers [Civil] of State and Panchayat Services as on 31st December 1976, and seeks directions on the respondents to give him seniority in the said cadre w.e.f. 1st July 1969 with all consequential benefits accruing therefrom, such as deemed date of promotion in the higher cadre, fixation of salary and seniority in the higher cadre etc.

2. According to the petitioner, he was appointed on 30th June 1969 as Work-Charge Junior Engineer on a regular establishment and resumed his duties pursuant to that order from 1st July 1969. Thereafter, by order dated 29th April 1970, he was appointed to the post of Junior Engineer, subject to the approval of the Gujarat Panchayat Selection Board, Ahmedabad. Thereafter, he was called by the Selection Board for interview by the call letter dated 2nd July 1970. By letter dated 10th August 1970, the petitioner was informed that he had been selected as Junior Engineer [Civil] by the Selection Board. According to the petitioner, he was continuously working from 1st July 1969 as Junior Engineer and by letter dated 23rd October 1972, a decision was taken to regularize the appointment of the petitioner on the said post in view of such continuous officiation from the initial date of appointment i.e. 1st July 1969. It is contended that the services for the said period came to be regularized by the order dated 12th December 1972 and necessary entry was directed to be made in his service book. It is contended that despite this position in the seniority list which came to be published on 10/9/1984 showing the position as on 31st December 1976, the petitioner was placed at S.No.826 on the basis of the selection done by the Selection Board ignoring the regular services rendered by the petitioner. The petitioner thereafter made a representation on 23rd October 1984 to show his seniority position on the basis of the date of his initial appointment, which was 1st July 1979. Ultimately, the said representation came to be rejected by the impugned order.

3. It was contended on behalf of the petitioner that the impugned order was arbitrary and illegal and contrary to the directions contained in the Government Resolution dated 1st August 1978 for counting the period of regularized services for the purpose of seniority. It was contended that since the petitioner was working on the work-charge establishment since 1st July 1969 till the date of his selection by the Selection Board, the intervening period was required to be counted towards seniority on the basis of the instructions issued in the Government Resolution dated 1st August 1978, and

therefore, the impugned order was illegal and violative of the fundamental rights of the petitioner under Article 14 and 16 of the Constitution. It was further contended by the learned counsel that, by order dated 29th April 1970, the petitioner was appointed in the regular cadre subject to the rider that he was liable to be reverted, if not selected by the Selection Board. It was argued that, in any event, he came to be selected and that selection ought to have related back to the date of his appointment on 29th April 1970, which ought to be treated as a regular appointment.

3.1 Learned counsel in support of his contention placed reliance on the following decisions of the Supreme Court :-

[a] The decision in case of Rajbir Singh & ors. v/s Union of India [AIR 1991 SC 518] was cited for the proposition that it laid down to the effect that, if a person is appointed against a substantive vacancy and is subsequently promoted to continue on adhoc basis to hold such posts for a number of years, then in that case, the appointment though made on adhoc basis, has to be taken into consideration in reckoning the seniority of the holder on that basis. In that case, services were rendered by the employees in Class IV posts and they were subsequently promoted on adhoc basis after holding regular tests and being found qualified to Class III services. Their services subsequently were regularized in the Class III cadre and it was in that context that the Supreme Court held that it cannot be said that such adhoc service for a period of about 11 years would not be taken into account in determining the seniority of the holders of the Class III posts.

[b] The decision in the case of M.V.Krishna Rao and others v/s Union of India and others [AIR 1994 SC 1223] was cited for its proposition that the promotees cannot be deprived of benefit of continuous officiation in cadre posts. It may be noted that, in para 11 of the said judgement, the Supreme court observed that there was no finding recorded by the Tribunal nor was any material placed before the Court to show that the postings of the promotees in the cadre post was by way of a local arrangement or temporary.

[c] The decision in the case of Keshav Road & another

v/s State of U.P. & ors. [AIR 1999 SC 44] was cited for the proposition that seniority of adhoc appointees was to be counted from the date of substantive appointment. In that case, in the background of the relevant Rules governing the posts in question, it was noted that the appellants possessed the requisite qualification for the post and their promotions were within the quota prescribed for them as there were sufficient vacancies reserved for promotees. It was also noted that they were selected by the Departmental Promotion Committee even for their adhoc promotion and their promotions were confirmed and a seniority list came to be prepared which was held to be in accordance with the Rules.

4. The Supreme Court in case of State of Maharashtra v/s Purshottam & ors. reported in 1996 [9] SCC 266, has in terms held that ordinarily the services rendered by an employee in work-charge establishment is not to be taken into account for his seniority in the regular establishment. Reliance placed by the petitioner on the resolution dated 1st August 1978 for claiming seniority from 1st July 1969 is wholly misconceived because the said resolution was set aside by a decision of this Court rendered on 29th January 1980 in Special Civil Application No.2653/78. The question of seniority of the employees who had earlier worked on work-charge establishment was directly and substantially in issue in that decision, and after considering the said resolution dated 1st August 1978, this Court held that the rule of seniority embodied in the said resolution providing for giving credit for pre-selection services rendered on the work-charge establishment was irrational and arbitrary and that the resolution is therefore violative of the fundamental rights under Article 14 of the Constitution. The State was restrained from giving effect to the rule of seniority incorporated in the said resolution.

5. From the order of initial appointment of the petitioner in the work-charge establishment, dated 30/6/1969, which is at Annexure 'B' to the petition, it is clear that the petitioner's appointment on the work-charge establishment was only by way of a stopgap arrangement and it was stipulated that such arrangement was liable to be terminated at any time without notice. Therefore, the nature of appointment under order dated 30th June 1969 did not create any right in favour of the petitioner. Even the appointment dated 29/4/1970 as per the order at Annexure 'C' to the petition shows that the

supervisors mentioned therein including the petitioner, were appointed on purely temporary basis and subject to the approval by the Selection Board for a period of 90 days. Even this order by itself did not create any right in favour of the petitioner to continue beyond the period of 90 days which was specifically mentioned therein. As is clear from the communication dated 10th August 1970 at Annexure 'D' to the petition, the petitioner came to be selected by the Board for the said post and his name was recommended for appointment in the District Panchayat. The vexed question of determining the seniority of such employees, after the resolution dated 1st August 1978 came to be set aside by this Court, was considered by the Government and the Government issued instructions for fixation of seniority of such persons under resolution dated 17th October 1983 which is placed on record at Annexure 'III' with the affidavit-in-reply filed on behalf of the State Government. In that resolution, it was clarified that in case of those who were locally recruited after 14/8/1967 and were thereafter selected by the Gujarat Panchayat Selection Board, their seniority will be reckoned after the date of such selection on the basis of appointments made pursuant thereto. The rules for fixing seniority reflecting in the Government Resolution dated 17th October 1983 were never challenged. It is therefore clear that the petitioner is not entitled to claim any seniority on the basis of the earlier resolution dated 1st August 1978 or on any other basis from any date anterior to the appointment made pursuant to the selection by the Gujarat Panchayat Selection Board.

6. In this view of the matter, there is absolutely no substance in the claim put forth by the petitioner for giving him seniority prior to the date which has been shown in the final seniority list annexed with the circular at Annexure 'G' to the petition.

7. The petition is therefore rejected and rule is discharged with no orders as to costs.

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